

Remarks

Upon entry of the foregoing amendment, claims 1 to 3 and 16 are pending. Claims 1 and 16 are currently amended herein. Claims 4 to 15 were previously canceled. Applicant reserves the right to pursue the subject matter of these canceled claims in a further continuation application.

Claim Rejections – 35 USC §102

Claim 1 was rejected under 35 USC §102, in light of US Patent No. 5,189,040. The Examiner provided that the '040 patent "anticipate[s] the compounds claimed in claim 1 wherein R1 is a six-membered heterocyclic group having 1–4 nitrogen heteroatoms; R4 is an optionally substituted phenyl group; R2 and R3 independently represent H or lower alkyl groups."

Without acceding to the Examiner's statements or reasons for rejection, Applicant has amended claim 1 herein to reflect that R⁴ is phenyl substituted by –CN. Applicant respectfully asserts this amendment to claim 1 is purely in the interests of advancing this case to allowance. Support for this amendment is clearly provided in the instant specification on page 6, line 23. Further, this amendment overcomes the novelty rejection raised in light of the '040 patent because the phenyl substituents in the '040 patent (i.e., R3 and R4) cannot be –CN.

Accordingly, Applicant requests withdrawal of the rejection.

Claim Rejections – 35 USC §103

Claims 1 to 3 were rejected under 35 USC §103, as "being unpatentable over US Patent No. 5,189,040." Applicant respectfully disagrees with this rejection.

The '040 patent discloses compounds for use in agricultural/horticultural fungicides. The compounds of the present application clearly provide a non-obvious inventive concept over the '040 patent because they have been found to inhibit reverse transcriptase, as demonstrated in the Examples of the instant application. Moreover, as discussed above, amended claim 1 (wherein R⁴ is phenyl substituted by –CN) is clearly outside the scope of the teachings of the '040 patent, thus there is no "structural similarity" or "similar activity" between the instant compounds and those disclosed in the '040 patent. Further, Applicant respectfully submits that one of

ordinary skill in the art would not reasonably expect a compound that is to be used in agricultural/horticultural fungicides to be administered to a human for inhibiting reverse transcriptase.

Accordingly, Applicant requests withdrawal of the rejection.

Claim Objections – Claim 16

Claim 16 was objected to as “containing non-elected subject matter.” Applicant respectfully disagrees.

Claim 16 is contained within original Group I (claims 1 to 9, and 16), as set forth in the Restriction Requirement dated December 1, 2005. Applicant previously elected Group I without traverse; see Applicant’s response of December 16, 2005.

Accordingly, Applicant respectfully asserts the objection to claim 16 should be withdrawn.

CONCLUSION

If any fee not submitted herewith is required for the filing of this response, including any fee for an extension of time for which Applicant hereby petitions, please charge all such necessary fees to Applicant’s Deposit Account No. 500329.

Respectfully submitted,

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